

**JAN 04 2001**

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

CAUSE NO. A-1412

2. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.

3. The Department filed a Petition and Notice of Hearing on or about July 28, 2000, which was served upon Respondent by mailing the same to his address of record by certified mail, return receipt requested. Respondent received the Petition and Notice of Hearing on or about July 29, 2000, as evidenced by the return receipt card attached to Exhibit 3.

4. The Department, in its Petition, alleged that Respondent had violated a Nebraska insurance law, specifically Neb. Rev. Stat. §44-4028 (12), which authorizes the Director to revoke or suspend any person's license if the Director determines that such person has: [o]btained a loan from an insurance client that is not a financial institution and who is not related to the licensed person by birth, marriage or adoption.

5. The Department sent Respondent a Department of Insurance Notice ("Notice") on or about August 20, 1999, which is attached to Exhibit 12, setting forth the major changes made to the Insurance Producers Licensing Act ("Act"), Neb. Rev. Stat. §44-4001 et seq., by Legislative Bill 260 ("LB 260"). A provision in LB 260, effective as of August 28, 1999, prohibited licensed insurance producers from borrowing from their insurance clients.

6. The provision of LB 260, prohibiting a licensed insurance producer from obtaining a loan from an insurance client, is codified at Neb. Rev. Stat. §44-4028 (12).

7. Respondent, in the Stipulation, marked as Exhibit 6, stipulated that he obtained the following loans on the following dates and in the following amounts from Kathryn L. Fitzgerald, an insurance client of Respondent, who is neither a financial institution nor is she related to Respondent by birth, marriage or adoption:

- a. On August 30, 1999, \$850;
- b. On September 29, 1999, \$700;
- c. On October 19, 1999, \$1200;
- d. On October 25, 1999, \$1200;

- e. On November 1, 1999, \$1800;
- f. On November 8, 1999, \$1700;
- g. On November 15, 1999, \$2000;
- h. On November 22, 1999, \$3500;
- i. On November 29, 1999, \$3400
- j. On November 29, 1999, \$1200;
- k. On December 6, 1999, \$3300;
- l. On December 6, 1999, \$600;
- m. On December 13, 1999, \$3000;
- n. On December 13, 1999, \$1200;
- o. On December 20, 1999, \$800;
- p. On December 20, 1999, \$2700;
- q. On December 22, 1999, \$2000;
- r. On December 27, 1999, \$2600;
- s. On December 27, 1999, \$1000;
- t. On January 3, 2000, \$2350;
- u. On January 3, 2000, \$2400;
- v. On January 10, 2000, \$3800;
- w. On February 28, 2000, \$850;
- x. On March 6, 2000, \$6000; and
- y. On March 27, 2000, \$850.

8. The various funds which Respondent borrowed from Ms. Fitzgerald amount to \$51,000, as illustrated by Exhibit 6.

9. The funds which Respondent borrowed from Ms. Fitzgerald were on dates subsequent to the effective date of LB 260.

10. The Department issued a Subpoena Duces Tecum to obtain the records of Commercial Federal Bank ("Commercial Federal"), 11207 West Dodge Road, Omaha, NE 68154, which pertained to deposits made to accounts held by Respondent at Commercial Federal. The records were produced by Commercial Federal, as evidenced by Exhibit 13.

11. Exhibit 13 contains copies of checks written to Commercial Federal by Ms. Fitzgerald, which were deposited in Respondent's account. The copies of said checks were written by Ms. Fitzgerald on the same dates and in the same amounts as the amounts and dates of loans recited in the Stipulation, Exhibit 6, item "(5)".

12. Respondent stipulated, as evidenced by Exhibit 6, that he gave an instrument, as illustrated by Exhibit 14, to Kathryn L. Fitzgerald, dated April 19, 2000, which stated: "I owe you \$14,298.00. I will make weekly payments to you and record ea. payment until paid in full. If something should happen to you, I would like your permission to take this note to your bank Trust Department and continue to pay them until paid in full."

13. Ron Suetes, Trust Officer of Beatrice National Bank, testified that he is trust officer to Kathryn L. Fitzgerald's trust. Mr. Suetes stated that a niece of Ms. Fitzgerald informed him of loans Ms. Fitzgerald made to Respondent. Mr. Suetes continued that, subsequent to his meeting with Ms. Fitzgerald's niece, he met with Respondent to discuss the loans. At the time of their meeting, Mr. Suetes had calculated the balance owed by Respondent to be about \$10,000. Mr. Suetes stated that Respondent informed him at the meeting that he owed Mr. Fitzgerald around \$12,000, and that he had been paying off the money owed.

14. Bill Zins, the American Republic Insurance Company ("American Republic") Sales Manager in the Lincoln, Nebraska office, in testifying for the Respondent, stated that he had

known Respondent about twenty-two (22) years and that he had never seen anyone cheated by Respondent, but that that two (2) or three (3) years ago, in 1997 or 1998, he received information that Respondent was taking out loans from his clients. Mr. Zins reported this information to the American Republic, and he testified that the National Sales Director of American Republic told him that Respondent was not to obtain any more loans from his insurance clients. Following the company's directive, Mr. Zins testified that he then told Respondent not to borrow money from his insurance clients.

15. Respondent, in his testimony, confirmed that Mr. Zins told him not to borrow money from his insurance clients.

16. Respondent testified that he did borrow money from his insurance clients after he was instructed by Mr. Zins not to borrow from his insurance clients.

17. Respondent, when asked why he did not keep his insurance company informed of the loans he took out from his insurance clients, after being told by Mr. Zins not to borrow money in the future from his insurance clients, testified that borrowing from clients was his personal business, and that he believed it was okay to borrow money from his clients, but not to steal from them.

18. Respondent testified that three (3) or four (4) years ago, he borrowed money from Mrs. Cooper of Auburn. Respondent continued that someone from the bank evidently ratted on him to the sheriff, and that the sheriff interviewed him about that loan. Respondent continued that the focus of the sheriff's questioning was fraud, and he was not committing fraud.

19. Respondent testified that he has borrowed money from various insurance clients, including Nellie Ruch, Alex Schwabauer and John Murrell, as evidenced by Exhibit 7, Exhibit 8, and Exhibit 9.

20. Respondent testified that, in addition to the \$10,000 or \$11,000, owed to Ms. Fitzgerald, he owes the following: (1) \$30,000 to the estate of Nellie Ruch; (2) \$2,100, to Alex Schwabauer; (3) \$4,000, to John Murrell, and (4) \$1,250, to Claire Dias [sic]. Respondent also testified that he is repaying these loans from his earnings as an insurance agent.

21. Respondent testified that he borrowed money from Alex Schwabauer and John A. Murrell after Mr. Zins told him not borrow money from insurance clients and subsequent to August 28, 1999.

22. Respondent testified that he earns approximately \$120,000, a year from his insurance business, that he has been an insurance agent for thirty-three years, and that he borrowed money from clients to pay off credit cards and other debts. Respondent also testified that he owns no property and that he currently has an Internal Revenue Service obligation of \$120,000.

23. Respondent obtained a loan from an insurance client, Kathryn L. Fitzgerald, who is not a financial institution, and who is not related to Respondent by birth, marriage, or adoption.

24. Respondent obtained loans from other insurance clients who are not financial institutions, and who are not related to Respondent by birth, marriage, or adoption.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §4001 et seq.
2. The Department has personal jurisdiction over Respondent.
3. Respondent violated Neb. Rev. Stat. §44-4028 (12).

#### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the resident insurance agent license of Alvin A. Borer be revoked and that Respondent surrender his

insurance agent's license to the Nebraska Department of Insurance immediately upon receipt of this Order.

Dated this 3rd day of January, 2001.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

Linda R. Sanchez-Masi  
HEARING OFFICER

ORDER

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance vs. Alvin A. Borer, Cause No. A-1412.

Dated this 3rd day of January, 2001.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

L. Tim Wagner  
L. TIM WAGNER  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon Glen Witte, attorney for Respondent, at Witte & Bentjen, 5901 S. 58<sup>th</sup> Street, Suite A-1, Lincoln, NE 68516 by U.S. Mail, postage prepaid on this 4th day of January, 2001.

Christine Neighbors